

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Solutions on Hold, LLC, d/b/a Dentistry)	CG Docket No. 02-278
on Hold, for Retroactive Waiver of 47 C.F.R.)	
§ 64.1200(a)(4)(iv))	
)	
)	CG Docket No. 05-338

PETITION FOR WAIVER

Solutions on Hold, LLC, d/b/a Dentistry on Hold (“Solutions on Hold”) respectfully requests that the Commission grant it a waiver from 47 C.F.R. § 64.1200(a)(4)(iv) insofar as it may have sent fax advertisements before April 30, 2015, without the opt-out notices required by that rule to recipients that had provided prior express invitation or permission. The Commission recently granted a number of such waivers and invited similarly situated parties to file requests for the same relief.¹ Solutions on Hold is a similarly situated party, and good cause exists for providing it a waiver.

Background

The Telephone Consumer Protection Act (“TCPA”), enacted in 1991, prohibits the use of a fax machine to send an “*unsolicited* advertisement.”² In 2005, Congress enacted the Junk Fax Prevention Act to “require[] the sender of an *unsolicited* fax advertisement to provide specified notice and contact information on the fax that allows recipients to ‘opt out’ of any future fax

¹ *Petition for Declaratory Ruling, Waiver, and/or Rulemaking Regarding the Commission’s Opt-Out Requirement for Faxes Sent with the Recipient’s Prior Express Permission*, CG Docket No. 02-278, 05-338, Order, FCC 14-164, ¶¶ 22-31 (rel. Oct. 30, 2014) (“*Fax Order*”).

² 47 U.S.C. § 227(b)(1)(C) (emphasis added).

transmissions from the sender.”³ A subsequently issued Commission rule provided that a fax advertisement “sent to a recipient that has provided prior express invitation or permission to the sender must include an opt-out notice,”⁴ but, when issuing that rule, the Commission stated that “the opt-out notice requirement only applies to communications that constitute *unsolicited* advertisements.”⁵

Solutions on Hold is a small business that provides “on hold messaging” services for other small businesses. It provides valuable information about its products and other offers to commercial enterprises that specifically agreed to receive such offers via fax. Solutions on Hold did not believe that these solicited facsimiles required opt-out notices.

In the recently issued Fax Order, the Commission stated that its rules require that “senders of fax ads . . . include certain information on the fax that will allow consumers to opt out, even if they previously agreed to receive fax ads from such senders.”⁶ At the same time, however, the Commission “recognize[d] that some parties who have sent fax ads with the recipient’s prior express permission may have reasonably been uncertain about whether [the Commission’s] requirement[s] for opt-out notices applied to them.”⁷ The Commission accordingly “grant[ed] retroactive waivers of [its] opt-out requirement to certain fax advertisement senders to provide these parties with temporary relief from any past obligation to provide the opt-out notice to such recipients required by [its] rules.”⁸ The Commission invited

³ *Fax Order* ¶ 5 (emphasis added).

⁴ 47 C.F.R. § 64.1200(a)(4)(iv).

⁵ *Fax Order* ¶ 24 (quoting *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Fax Prevention Act of 2005*, CG Docket Nos. 02-278, 05-338, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787, 3810 n.154 (2006) (“*Junk Fax Order*”)) (emphasis in original).

⁶ *Fax Order* ¶ 1.

⁷ *Id.*

⁸ *Id.*

“[o]ther, similarly situated entities [to] request retroactive waivers from the Commission, as well.”⁹

Solutions on Hold Should Be Granted A Waiver

Solutions on Hold respectfully requests that the Commission grant it the same waiver the Commission granted to the parties in the *Fax Order*. As the Commission has explained, it may grant a waiver where “(1) special circumstances warrant a deviation from the general rule and (2) the waiver would better serve the public interest than would application of the rule.”¹⁰ Solutions on Hold is entitled to a waiver under this standard, for the same reasons the parties granted waivers in the *Fax Order* received them.

First, there are “special circumstances” that “warrant deviation from the general rule” here, in that there are “two grounds that . . . led to confusion among affected parties (or misplaced confidence that the opt-out notice rule did not apply to fax ads sent with the prior express permission of the recipient).”¹¹ Specifically, the Commission has noted that its order accompanying the opt-out notice regulation stated that “the opt-out notice requirement only applies to communications that constitute *unsolicited* advertisements” and that the notice of proposed rulemaking issued in advance of that regulation “did not make explicit that the Commission contemplated an opt-out requirement on fax ads sent with the prior express

⁹ *Id.* ¶ 22.

¹⁰ *Id.* ¶ 23; see 47 C.F.R. § 1.3; see also, e.g., *In the Matter of Coalition of E-Reader Manufacturers’ Petition for Class Waiver of Sections 716 and 717 of the Communications Act and Part 14 of the Commission’s Rules Requiring Access to Advanced Communications Services (ACS) and Equipment by People with Disabilities*, Order, CG Docket No. 10-213, DA 14-95 (rel. Jan. 28, 2014) (granting a waiver from the Commission’s advanced communications services accessibility rules to a class of e-readers for a limited period of time where it would not be contrary to the public interest); *In the Matter of Cargo Airline Association Petition for Expedited Declaratory Ruling*, Order, CG Docket No. 02-278, FCC 14-32 (rel. March 27, 2014) (finding good cause to waive the requirements contained in Section 64.1200(a)(1)(iii) of the TCPA for package delivery companies to alert consumers about their packages).

¹¹ *Id.* ¶ 24.

permission of the recipient.”¹² Those same circumstances are present with respect to Solutions on Hold. There is “nothing in the record here demonstrating that [they] understood that they did, in fact, have to comply with the opt-out notice requirement for fax ads sent with prior express permission but nonetheless failed to do so.”¹³

Second, granting Solutions on Hold “a retroactive waiver would serve the public interest.”¹⁴ In the *Fax Order*, the Commission found this requirement satisfied because “a failure to comply with the rule – which . . . could be the result of reasonable confusion or misplaced confidence – could subject parties to potentially substantial damages.”¹⁵ The same is true here. Without a waiver, Solutions on Hold could face a putative class litigation in which plaintiffs seek substantial statutory penalties.

In sum, Solutions on Hold’s circumstances are very similar to the many other companies that have already received retroactive waivers.¹⁶ The same waivers are thus warranted here.

* * *

For these reasons, Solutions on Hold respectfully requests that the Commission grant it a retroactive waiver of rule 47 C.F.R. § 64.1200(a)(4)(iv) insofar as it may have sent fax advertisements before April 30, 2015, without the opt-out notices required by that rule to recipients that had provided prior express invitation or permission.

¹² *Id.* ¶¶ 24-25 (quoting *Junk Fax Order*, 21 FCC Rcd at 3810 n.154).

¹³ *Id.* ¶ 26.

¹⁴ *Id.* ¶ 27.

¹⁵ *Id.*

¹⁶ *See Fax Order* at ¶ 22 and nn.4 & 81.

Dated: March 13, 2015

Respectfully submitted,

Solutions on Hold LLC

By: /s/ Eileen M. Hunter
One of its attorneys

Eileen M. Hunter (MN #0336336)
Erin L. Hoffman (MN#0387835)
FAEGRE BAKER DANIELS LLP
90 S. 7th St.
2200 Wells Fargo Center
Minneapolis, MN 55402
612-766-700
612-766-1600 (fax)
eileen.hunter@faegrebd.com
erin.hoffman@faegrebd.com

Attorneys for Solutions on Hold LLC